

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 508 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

UDHAVDAS A NARSINGHANI

Versus

STATE OF GUJARAT

Appearance:

MR KM SATWANI for Petitioner

MR ND GOHIL AGP for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/06/97

ORAL JUDGMENT :

The petitioner who entered the Government service on 29th July 1964 claimed seniority on the Temporary Establishment with effect from 23rd November 1965 as was done in the case of one Shri S.K.Parmar. The petitioner preferred Special Civil Application No. 4585/87 before

this court and claimed seniority above the said Shri S.K.Parmar and three others. Upon assurance being given by the Government, the said petition was withdrawn on 23rd January 1990. The appeal preferred against the interim order was also dismissed for having become infructuous. Pursuant to the assurance given by the Government in its letter dated 19th January, 1990, an order was made on 15th February, 1990 (Annexure-F to the petition).

2. Under the said order, the petitioner was granted seniority in the cadre of Supervisor (Additional Assistant Engineer) with effect from 23rd November, 1965 above said Shri S.K.Parmar. Pursuant to the said seniority, under the Government order dated 9th April 1991, the petitioner was promoted as Deputy Executive Engineer. The petitioner has since been serving as Deputy Executive Engineer. On 3rd January, 1995 the Government made the impugned order cancelling the earlier order dated 15th February 1990. It is this order dated 3rd January 1995 which is subject matter of challenge in this petition. The impugned order dated 3rd January 1995 indicates that the earlier order dated 15th February 1990 was made by the Government in its Roads and Buildings Department without authority of law and was therefore liable to be cancelled. However, in the affidavit made in reply to this petition, it has been contended that while considering the petitioner's case for absorption on Temporary Establishment as Additional Assistant Engineer, the relevant rules were not taken care of. Infact, the petitioner was not selected for the post of Additional Assistant Engineer until the year 1970 and the petitioner, therefore, could not have been granted seniority as of 23rd November, 1965. The petitioner not being entitled for promotion/absorption on temporary establishment as Additional Assistant Engineer in the year 1965, the order dated 15th February, 1990 under which the petitioner was granted seniority above Shri S.K.Parmar was erroneous and required to be rectified. The petitioner has disputed this position and averred that the petitioner having been given benefit of seniority as of 23rd November, 1965 and having been given promotion to the post of Deputy Executive Engineer, the said benefit could not have been withdrawn and the Government was estopped from withdrawing the said benefit particularly because relying on the assurance given by the Government, the petitioner had withdrawn his earlier petition i.e. Special Civil Application No. 4585/87.

3. It is not in dispute that the petitioner has not been afforded an opportunity of hearing before issuance of the impugned order dated 3rd January, 1995. The impugned order not only affects the seniority of the petitioner, but shall also affect the promotion granted to the petitioner under order dated 9th April, 1991. It was therefore imperative for the State Government to afford an opportunity of hearing to the petitioner before withdrawing the benefits granted to the petitioner under order dated 15th February, 1990. This petition, therefore, requires to be accepted and the impugned order dated 3rd January, 1995 (Annexure-A to the petition) requires to be quashed and set aside.

4. Petition is therefore allowed. Order dated 3rd January, 1995 (Annexure-A to the petition) is quashed and set aside.

5. It is clarified that the respondents shall be at liberty to make an order altering the seniority of the petitioner in accordance with law, if necessary, but not without calling upon the petitioner to show cause why such an order should not be made and not without affording an opportunity of personal hearing to the petitioner. This order is made without prejudice to the rights and contentions of both the parties to this petition. Rule is made absolute accordingly. There shall be no order as to costs.

JOSHI